

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Ella Mintz	Team: Squad #12	CCRB Case #: 201901096	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 01/29/2019 10:30 PM	Location of Incident: § 87(2)(b)	Precinct: 67	18 Mo. SOL 7/29/2020	EO SOL 3/15/2021	
Date/Time CV Reported Tue, 01/29/2019 11:00 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 02/06/2019 11:05 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Eric Cavallo	08649	957439	PBBS SU
2. POM Michael Sidorskiy	14429	931988	PBBS SU

Officer(s)	Allegation	Investigator Recommendation
A.POM Michael Sidorskiy	Abuse: Police Officer Michael Sidorskiy stopped the vehicle in which § 87(2)(b) was an occupant.	§ 87(2)(g), § 87(4-b)
B.POM Michael Sidorskiy	Abuse: Police Officer Michael Sidorskiy searched the vehicle in which § 87(2)(b) was an occupant.	§ 87(2)(g), § 87(4-b)
C.POM Michael Sidorskiy	Discourtesy: Police Officer Michael Sidorskiy spoke discourteously to § 87(2)(b)	§ 87(2)(g), § 87(4-b)
D.POM Michael Sidorskiy	Abuse: Police Officer Michael Sidorskiy failed to provide § 87(2)(b) with a business card.	§ 87(2)(g), § 87(4-b)
§ 87(2)(g), § 87(4-b)	§ 87(2)(b)	§ 87(2)(g), § 87(4-b)

Case Summary

On January 29, 2019, § 87(2)(b) filed this complaint over the phone with IAB. It was received by the CCRB on February 6, 2019 under log #19-4122.

On January 29, 2019, at 10:30PM, Police Officer Michael Sidorskiy and Police Officer Eric Cavallo, both assigned to Patrol Borough Brooklyn South Specialized Units, pulled over § 87(2)(b)'s vehicle in front of § 87(2)(b) in Brooklyn (**Allegation A- Abuse of Authority:** § 87(2)(g) PO Sidorskiy searched § 87(2)(b)'s vehicle (**Allegation B- Abuse of Authority:** § 87(2)(g) PO Sidorskiy called § 87(2)(b) a “wiseass” (**Allegation C- Discourtesy:** § 87(2)(g) and refused to provide him with a business card (**Allegation D- Abuse of Authority:** § 87(2)(g) § 87(2)(g), § 87(4-b) § 87(2)(b) was not arrested or summonsed as a result of this incident.

There is no available video footage capturing this incident. Neither PO Sidorskiy nor PO Cavallo were equipped with body-worn cameras at the time of the incident.

On December 11, 2019, this case was returned for further investigation by Panel 12B-2019 (Board Review 16).

Findings and Recommendations

Allegation A-Abuse of Authority: Police Officer Michael Sidorskiy stopped the vehicle in which § 87(2)(b) was an occupant.

In his verified statement, § 87(2)(b) stated that on January 29, 2019 at approximately 10:30PM, he was driving alone in his vehicle when he noticed an unmarked black Ford Fusion behind him flash his police lights for him to pull over (Board Review 01). § 87(2)(b) denied partaking in any narcotics on that day. § 87(2)(b) pulled over his vehicle in front of § 87(2)(b) in Brooklyn. § 87(2)(b) denied committing any VTL infractions prior to being stopped. § 87(2)(b) asked PO Sidorskiy and PO Cavallo multiple times to explain the reason he was being stopped but no reason was ever provided.

It is undisputed among the officers that it was PO Sidorskiy's decision to stop § 87(2)(b)'s vehicle. PO Sidorskiy and PO Cavallo both testified that they observed § 87(2)(b) fail to signal in making a left turn from § 87(2)(b) onto § 87(2)(b) (Board Review 02, 03). PO Sidorskiy stated that § 87(2)(b)'s failure to signal was the only reason for the car stop. PO Sidorskiy opted to use his discretion and not issue § 87(2)(b) a summons for any infractions.

PO Sidorskiy's memo book noted that § 87(2)(b) was stopped but his entry regarding the stop did not note the reason for the stop (Board Review 04). PO Cavallo did not prepare a memo book entry regarding this incident (Board Review 05).

There was no video footage capturing this incident and the involved officers were not equipped with body-worn cameras at the time of incident.

§ 87(2)(b), § 87(2)(g)

Allegation B-Abuse of Authority: Police Officer Michael Sidorskiy searched the vehicle in which § 87(2)(b) was an occupant.

§ 87(2)(b) stated that after he provided his license and registration to PO Sidorskiy, PO Sidorskiy and PO Cavallo returned to their vehicle for approximately five minutes. PO Sidorskiy came to the driver's side door and told § 87(2)(b) to exit the vehicle. § 87(2)(b) asked PO Sidorskiy why he needed to exit the car when they had not even explained the reason for the stop. PO Sidorskiy told § 87(2)(b) to get out of the car and that he would explain the reason for the stop once he exited. § 87(2)(b) exited the vehicle. PO Sidorskiy instructed § 87(2)(b) to stand at the back of his vehicle with PO Cavallo, which he did. PO Sidorskiy stayed by the car and put his entire body inside § 87(2)(b)'s open driver's side door. § 87(2)(b) asked PO Cavallo why PO Sidorskiy was searching his car. PO Cavallo told § 87(2)(b) that PO Sidorskiy would explain. PO Sidorskiy was inside the vehicle for approximately fifteen minutes. PO Sidorskiy then came back to the back of the car with § 87(2)(b)'s bottle of pain medication in his hand. PO Sidorskiy asked § 87(2)(b) what it was. § 87(2)(b) told PO Sidorskiy that it was pain medication. PO Sidorskiy did not respond to this but went to § 87(2)(b)'s car and threw the bottle inside. PO Sidorskiy then returned to the back of the car and told § 87(2)(b) that he was wanted for robbery. § 87(2)(b) told PO Sidorskiy that he had never robbed anyone. PO Sidorskiy showed § 87(2)(b) a photo of § 87(2)(b)'s younger brother, § 87(2)(b) § 87(2)(b) who is approximately six years younger than § 87(2)(b). § 87(2)(b) told the CCRB that his family has "strong genes" and that he does look a "little bit" like his brother. § 87(2)(b) told PO Sidorskiy that the person depicted in the photo was his brother.

PO Sidorskiy and PO Cavallo both testified to the CCRB on July 30, and August 14, 2019, respectively, that § 87(2)(b) was calm and cooperative throughout the car stop.

In his testimony on July 30, 2019, PO Sidorskiy testified that when he asked § 87(2)(b) for his license and registration, § 87(2)(b) told the officers that he did not have any identification but he provided his name and date of birth. PO Sidorskiy walked back to his police vehicle and ran a search based on this information. The result of the search indicated that § 87(2)(b) had an active warrant for felony grand larceny. PO Sidorskiy recognized the person in the photo attached to the warrant to be § 87(2)(b) the driver of the vehicle he had just pulled over. The search also revealed that § 87(2)(b) had a prior arrest history, but PO Sidorskiy did not recall what that history entailed. PO Sidorskiy walked back to § 87(2)(b)'s vehicle and asked § 87(2)(b) to step out of the vehicle, which he did. As § 87(2)(b) exited the vehicle, PO Sidorskiy shone his flashlight inside the vehicle. After § 87(2)(b) exited the vehicle, PO Sidorskiy leaned his body in through the open driver's side door, and shone his flashlight on the front driver and passenger seat, the backseat, the backseat floor, and the door handles. PO Sidorskiy stated that he would not classify looking into the vehicle as a search but that he wanted to make sure § 87(2)(b) did not come out of the car "with a gun or anything." PO Sidorskiy characterized this as his usual procedure to ensure his safety. PO Sidorskiy stated that the arrest history he had read upon searching § 87(2)(b)'s name caused him to suspect that § 87(2)(b) could possibly be armed. PO Sidorskiy stated that his search of the vehicle lasted less than a minute. PO Sidorskiy did not take a pill bottle from the vehicle and question § 87(2)(b) about it.

PO Sidorskiy stated that following looking in § 87(2)(b)'s car, he told § 87(2)(b) that he had an outstanding warrant for grand larceny. § 87(2)(b) asked to see the warrant and PO Sidorskiy showed it to him, as well as the photo attached to it. § 87(2)(b) stated that it was not him in the photo and but his identical twin brother, § 87(2)(b) who was incarcerated at the time. § 87(2)(b) added that his twin brother, § 87(2)(b) had used his name in the past when he had been arrested. PO Sidorskiy then called an unknown person from the Warrants Section and gave the number on the warrant to find out if it was still active, which it was. PO Sidorskiy conducted a search for § 87(2)(b) which confirmed that § 87(2)(b) was indeed incarcerated, and that he had

previously used § 87(2)(b)'s name on several separate occasions when he had been arrested. PO Sidorskiy did not conclusively find that the warrant was for § 87(2)(b) and not § 87(2)(b) but stated that he believed § 87(2)(b) when he said that the warrant was for § 87(2)(b) because everything he said about his brother using his name was supported by the computer checks and that it "made sense." PO Sidorskiy told § 87(2)(b) he was free to leave.

In his testimony on August 14, 2019, PO Cavallo testified that when approaching § 87(2)(b)'s vehicle, he smelled a strong odor of marijuana emanating from the vehicle. PO Cavallo described the odor as smelling as if "within the past few minutes, it [marijuana] was burning." PO Cavallo asked § 87(2)(b) to exit the vehicle and told him that the reason he asked him to exit the vehicle was because of the smell of marijuana. § 87(2)(b) was compliant in exiting the vehicle. PO Cavallo stood with § 87(2)(b) by the trunk of § 87(2)(b)'s car and ran his name in his departmental phone. § 87(2)(b) was not handcuffed. PO Cavallo observed PO Sidorskiy enter § 87(2)(b)'s car by the driver's side door but did not see what PO Sidorskiy did while he was inside the car. § 87(2)(b)'s name came back with an active warrant and an active I-Card. PO Cavallo could not recall what the warrant or I-Card were for. PO Cavallo told § 87(2)(b) about the active warrant and I-Card. § 87(2)(b) explained that he had a twin brother, § 87(2)(b) and said that the warrant and I-Card were for § 87(2)(b). § 87(2)(b) told PO Cavallo that this has happened before. PO Cavallo conducted a search for § 87(2)(b) and found that § 87(2)(b) is currently incarcerated. PO Sidorskiy looked in § 87(2)(b)'s vehicle for approximately one minute. PO Cavallo did not recall if PO Sidorskiy ever approached him and § 87(2)(b) with a pill bottle in his hand. PO Cavallo did not remember PO Sidorskiy ever asking § 87(2)(b) any questions regarding medication that he found inside the vehicle. PO Sidorskiy did not recover any contraband from § 87(2)(b)'s vehicle.

On January 7, 2020, and January 31, 2020, respectively, PO Sidorskiy and PO Cavallo were re-interviewed at the CCRB (Board Reviews 15, 16). PO Sidorskiy and PO Cavallo provided testimony that diverged on two points: whether they smelled marijuana at the time of the vehicle stop, and whether information about the observation of the odor of marijuana was conveyed between the officers during the stop. Both officers stated that they did not have a conversation about the odor of marijuana after the stop had concluded.

In his testimony on January 7, 2020, PO Sidorskiy stated that PO Cavallo never conveyed to him that he smelled marijuana during the course of the car stop. PO Sidorskiy stated that he did not recall smelling marijuana himself. PO Sidorskiy reiterated that he looked into § 87(2)(b)'s car because he wanted to ensure his safety, make sure that § 87(2)(b) did not have a gun, and because § 87(2)(b) had an open warrant. Aside from those reasons, there were no other factors that led PO Sidorskiy to look inside § 87(2)(b)'s vehicle.

In his testimony on January 31, 2020, PO Cavallo reiterated that he smelled marijuana during the car stop. PO Cavallo stated that he conveyed this observation to PO Sidorskiy when § 87(2)(b) initially exited the vehicle by pointing his finger. PO Cavallo pointed at PO Sidorskiy with his finger in order to signify that he smelled marijuana without explicitly stating it. This pointing was "like a nod" in that it is a shorthand signal that PO Cavallo and PO Sidorskiy employ during their duties. PO Cavallo did not remember having a conversation with PO Sidorskiy about the smell of marijuana.

An arrest inquiry into § 87(2)(b) by his name and date of birth reveals seven arrests, four of which are sealed (Board Review 06). § 87(2)(b), § 87(2)(a) 160.50

§ 87(2)(g)

§ 87(2)(b), § 87(2)(g)

An officer placing a flashlight-laden hand inside a vehicle to better observe the floor of a car constitutes a search. People v. Young 207 A.D.2d 465 (Board Review 08)

The scent of marijuana emanating from a defendant's vehicle provides officers with probable cause to search the vehicle and its occupants. People v. Chestnut 43 A.D.2d 260 (Board Review 07).

There may be circumstances where, after a lawful stop, an officer obtains information that leads to the conclusion that a weapon located within the vehicle presents an actual and specific danger to the officer's safety sufficient to justify a further intrusion into that vehicle, notwithstanding the occupants' inability to gain immediate access to the weapon. Factors that might indicate that a suspect has a weapon in their vehicle that may present a danger to officers include the vehicle's occupants failing to follow officers' directions after being stopped, an obvious lack of concern for the safety of others, and the vehicle's occupants matching a description of an individual suspected of participating in a violent crime involving a weapon. People v. Mundo 99 N.Y. 2d55 (Board Review 09).

An officer's knowledge of an individual's criminal past is not itself tantamount to an indication of criminality. People v. Brown 115 A.D.3d. (Board Review 10).

While PO Sidorskiy stated that he would not classify his actions as a search of the vehicle, breaching the doorway and shining his flashlight inside the vehicle constitutes a search according to Young.

§ 87(2)(b), § 87(2)(g)

Allegation C-Discourtesy: Police Officer Michael Sidorskiy spoke discourteously to § 87(2)(b).

§ 87(2)(b) stated that after he told PO Sidorskiy that the photo on his phone was of his brother, § 87(2)(b) he became annoyed and told PO Sidorskiy and PO Cavallo, “What’s the name on that photo?” § 87(2)(b) What’s my name?” § 87(2)(b) PO Sidorskiy replied, “You tryna (sic) be a wiseass, huh?”, said that it was a mistake, and told § 87(2)(b) to get back in the car. § 87(2)(b) told PO Sidorskiy, “How can it be a mistake? You have my driver’s license in your hand and it clearly says § 87(2)(b) The person you’re looking for is § 87(2)(b) It’s two different names!” § 87(2)(b) then went to his vehicle.

Both officers denied that PO Sidorskiy ever told § 87(2)(b) “You tryna be a wiseass, huh?” or referred to him as a “wiseass” in any context.

§ 87(2)(b), § 87(2)(g)

Allegation D-Abuse of Authority: Police Officer Michael Sidorskiy failed to provide § 87(2)(b) with a business card.

§ 87(2)(b) stated that when he returned to his vehicle, PO Sidorskiy approached gave § 87(2)(b) back his license and registration and told him he was free to go. § 87(2)(b) did not receive a business card during this incident. § 87(2)(b) immediately called 911 to file this complaint with IAB.

§ 87(2)(b) did not provide the officers’ names to IAB when filing his complaint with IAB via telephone. Instead, he provided a physical description of the officers and described them as young white males in police jackets. § 87(2)(b) also provided a partial plate number of the officer’s vehicle. According to IAB documentation that the CCRB received on February 7, 2019, the audio of § 87(2)(b)’s call with IAB is inoperable (Board Review 11).

PO Sidorskiy stated that he walked back to § 87(2)(b)’s vehicle and advised him to carry his identification card with him to avoid any confusion in the future. § 87(2)(b) requested PO Sidorskiy’s name and business card. PO Sidorskiy gave § 87(2)(b) his business card and told him he was free to leave.

PO Cavallo stated that he did not offer § 87(2)(b) a business card at the conclusion of the stop. When asked why he did not offer his card, PO Cavallo responded, “I don’t know. It’s just a car stop.” When asked about his understanding of when an officer is required to issue a business card, PO Cavallo responded, “We probably should have gave him one, honestly, but we didn’t.” PO Sidorskiy did not offer § 87(2)(b) a business card. PO Cavallo did not recall § 87(2)(b) ever requesting a business card from either officer.

While it is undisputed that PO Sidorskiy and § 87(2)(b) were alone by § 87(2)(b)’s vehicle at the conclusion of the stop, § 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(4-b), § 87(2)(g)

Civilian and Officer CCRB Histories

- § 87(2)(b) has been party to three CCRB complaints and has been named as a victim in six allegations:
 - § 87(2)(b)
 -
 -
- Police Officer Michael Sidorskiy has been a member of service for three years and has been a subject in 20 CCRB complaints and 48 allegations, of which one has been substantiated.
 - 201807856 involved a substantiated allegation of a vehicle search against PO Sidorskiy. The Board recommended Command Discipline A and the NYPD's disposition is currently unavailable.
 - § 87(2)(g)

Mediation, Criminal, and Civil Histories

- This case was not suitable for mediation.
- As of October 10, 2019, the New York City Office of the Comptroller has no record of a notice of claim filed in regards to this incident (Board Review 13).
- According to the Office of Court Administration (OCA), § 87(2)(b) has no criminal convictions in the state of New York (Board Review 14).

Squad: _____

Investigator: _____
Signature Print Date

Squad Leader: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

CCRB Case # 201901096